

**Before the Federal Communications Commission
Washington, D.C. 20554**

In the matter of the petition of

Canal Partners Media, LLC

for a declaratory ruling stating that broadcast stations' use of the Last-In-First-Out method to preempt political candidates' advertisements in favor of commercial advertisers' spots violates § 315(b) of the Communications Act

MB Docket No. 15-24

**Canal Partners Media, LLC's Comments
in Reply to Those Submitted by
the National Association of Broadcasters**

1. There is a pressing need for a declaratory ruling.

When it comes to whether stations can use LIFO to determine preemption priorities within a particular class of time and preempt political candidates' advertisements in favor of commercial advertisers' spots within the 45- and 60-day pre-election windows, the National Association of Broadcasters ("the NAB") asserts that "[t]here is no uncertainty about the Commission's policy to be resolved and, thus, no basis for the Commission to issue a declaratory ruling."¹ The NAB argued throughout its comments rather

¹ See Comments of the National Association of Broadcasters ("NAB" (continued...))

forcefully that it is settled law that a station’s use of LIFO to preempt political candidates’ advertising is legal. But that is not the advice that the NAB gives its member stations.

In the 18th edition of the NAB’s *Political Broadcast Catechism*, published in October 2014, just a few months ago, the NAB acknowledges that using the LIFO method to determine preemption priorities discriminates against political candidates:

FCC staff has also expressed concerns about station preemption policies such as “last in; first out” that may have the effect of preferring long-term commercial advertisers over candidates.²

How can the NAB argue to the Commission with a straight face that it is settled law that it is legal to use LIFO to preempt political candidates’ advertisements when the NAB acknowledges to everyone else that the Commission’s staff has “expressed concerns about station preemption policies such as ‘last in; first out’ that may have the effect of preferring long-term commercial advertisers over candidates”? It is troubling that the NAB would

¹(...continued)
Comments”) at 9–13.

² National Association of Broadcasters, *Political Broadcast Catechism* at 42 (18th ed. 2014). A copy of the relevant portion of the *Political Broadcast Catechism* is attached as Exhibit A. To CPM’s knowledge, this is the first time LIFO and how it discriminates against political candidates has been mentioned in the *Catechism*.

say one thing to this Commission while saying the opposite in the *Catechism*.³ If anything, the NAB—through its *Catechism* and the comments it filed in this proceeding—has demonstrated the need for the Commission to issue a declaratory ruling regarding stations’ use of LIFO to determine preemption priorities within the 45- and 60-day pre-election windows.

2. Stations are not disclosing their use of LIFO in violation of 47 C.F.R. § 73.1942(a)(1)(i).

According to the NAB, “discussions with NAB members reveal that a large number of television stations use LIFO ... in at least some classes to decide which spots—both commercial and candidate—to preempt,”⁴ and “[t]he one aspect of the Petition with which NAB agrees is the contention that LIFO preemption policies [must] be disclosed to candidates.”⁵

Canal Partners Media has purchased airtime for candidates throughout the United States.⁶ For the 2014 election cycle, Canal Partners Media requested each station in the markets in which it was considering buying airtime to provide it with their written disclosures addressing their political-

³ According to the NAB’s website, this *Catechism* helps broadcasters find solutions to the most common political-broadcasting questions.

⁴ NAB Comments at 8.

⁵ NAB Comments at 18.

⁶ Declaration of Amy Mills at ¶ 6, attached as Exhibit B (“Mills Declaration”).

broadcasting policies and procedures.⁷ As the result of the NAB asserting that a large number of stations use LIFO and that its use must be disclosed by stations, Canal Partners Media reviewed 169 of the written disclosures that it received from stations for the 2014 election cycle.⁸ The disclosures reviewed covered 55 media markets.⁹ Out of the 169 written disclosures that Canal Partners Media reviewed, only 7 mentioned that the station would be using LIFO to preempt political candidates' advertisements.¹⁰

So if a large number of television stations are using LIFO to preempt candidates' advertisements as the NAB asserts, and disclosure of their use of that policy is required under 47 C.F.R. § 73.1942(a)(1)(I), then a large number of television stations are violating the law by failing to disclose their use of LIFO.

Even if using LIFO to preempt political candidates' advertisements within the 45- and 60-day pre-election windows were legal (which it is not), the

⁷ *Id.* at ¶ 4.

⁸ *Id.* at ¶ 7.

⁹ *Id.* At ¶ 7.

¹⁰ *Id.* at ¶ 7.

Through persistent questioning, Canal Partners Media has learned that many stations use LIFO to preempt political candidates' advertisements. Mills Declaration at ¶ 11. Those discoveries by particular media buyers, which only came about through persistent questioning, do not satisfy a station's disclosure requirement.

NAB has just told the Commission that “a large number of television stations” are ignoring the Commission’s regulations, which is something that the Commission should address, perhaps with random audits.¹¹

3. The requested declaratory ruling respects the distinctions between classes of time.

The NAB falsely asserts that Canal Partners Media is seeking a declaratory ruling that political candidates should receive the highest preemption protection regardless of the class of time they purchase.¹² The

¹¹ If using LIFO to preempt political candidates’ advertisements within the 45- and 60-day pre-election windows were legal (which it is not), what would a proper station disclosure look like? It would look like this:

During the lowest-unit-charge period, the preemption protection provided to any advertiser within a class will be based on the date on which their ads were placed, with later-placed ads preempted first. This policy has been in effect for at least one year before the date of this disclosure. The station represents that it has applied this policy without any exceptions (including exceptions when providing make-goods) during the one-year period before the date of this disclosure. If it is determined that an exception was made, whether intentionally or by mistake, this policy will no longer be applied, and candidates will be treated as though their spots were placed first and will be the last preempted within the class. If the station deviates from this policy after the date of this disclosure, whether intentionally or by mistake, this policy will no longer apply and candidates will be treated as though their spots were placed first and will be the last preempted within the class.

¹² See NAB Comments at 11 (falsely asserting that the declaratory ruling sought would require political candidates to receive the highest preemption protection regardless of the class of time they purchase); see also NAB Comments at 10 (falsely claiming that the requested declaratory ruling would
(continued...)

NAB makes this assertion, and ones like it, repeatedly in its comments.¹³ But just because the NAB says something does not mean it is true.¹⁴

An advertiser, commercial or political, that purchases a higher class of time should not be preempted in favor of another advertiser buying a lower class of time. Nothing in the declaratory ruling sought by Canal Partners Media would abrogate the distinctions—which include preemption priorities—between classes of time. Canal Partners Media merely seeks a declaratory ruling that it is illegal for broadcast stations to preempt political candidates’ advertisements in favor of commercial advertisers’ spots *within a particular class of time* during the 45- and 60-day pre-election windows by using the Last-In-First-Out or LIFO method to determine preemption

¹²(...continued)

“entirely vitiat[e] the distinction between levels of preemption protection”); NAB Comments at 14 (falsely asserting that Canal Partners Media wants the Commission to require stations to offer Last-In-Never-Out protection to candidates regardless of the preemption protections normally associated with a class of time).

¹³ See NAB Comments at 10 (falsely claiming that the requested declaratory ruling would “entirely vitiat[e] the distinction between levels of preemption protection”); NAB Comments at 14 (falsely asserting that Canal Partners Media wants the Commission to require stations to offer Last-In-Never-Out protection to candidates regardless of the preemption protections normally associated with a class of time).

¹⁴ Compare NAB Comments at 9–13 (asserting that there is no controversy regarding stations using LIFO) *with* National Association of Broadcasters, *Political Broadcast Catechism* at 42 (18th ed. 2014) (advising that FCC staff has expressed concerns over stations’ use of LIFO, which prefers long-term commercial advertisers over candidates).

priorities because to do so violates § 315(b) of the Communications Act and its most-favored-advertiser requirement.

If a station uses LIFO to set preemption priorities within classes of time, the “First-In” advertiser within a particular class of time enjoys a preemption priority that makes it the station’s most-favored commercial advertiser *within that particular class of time*. Thus, under § 315(b), a political candidate is entitled to the same priority against preemption that the station gives the First-In advertiser *within that particular class of time* no matter when the political candidate books his or her spot.¹⁵ The priorities against preemption that are enjoyed by those that purchase a higher class of time should always trump advertisements bought in lower classes of time.

4. Applying LIFO to preempt political candidates’ advertisements in favor of commercial advertisers’ spots discriminates against political candidates.

While LIFO—if strictly applied¹⁶—may be a facially neutral policy, it has a disparate impact on political candidates. Even if the reasons stations adopt

¹⁵ See *Codification of the Commission’s Political Programming Policies*, 7 FCC Rcd. 678, 690 (1991) (rejecting broadcaster’s argument that the benefits that must accrue to candidates should not be based on a composite picture of the most-favored commercial advertiser and holding that the most-favored advertiser standard applies to the privileges that improve the value of the spot to the advertiser, including make goods, *preemption priorities*, and any other factors that enhance the value of a spot).

¹⁶ See n.11, *supra*.

LIFO policies are pure, because political candidates are a protected class under § 315(b) of the Communications Act, the Commission must be concerned with the consequences of the policy on political candidates.¹⁷

A facially neutral policy that is adopted without animus violates the law if the application of the policy discriminates against political candidates.

Until someone becomes a “legally qualified candidate,” they cannot get in line to establish a position in the LIFO pecking order.¹⁸ But commercial advertisers can get in the LIFO line whenever they want, and they are encouraged to buy early.¹⁹ Some stations may allow political candidates to place orders for spots before they become legally qualified candidates, but stations are not obligated to do so, and some do not.²⁰ Because candidates

¹⁷ See *Codification of the Commission’s Political Programming Policies*, 7 FCC Rcd. 678, 691 (F.C.C. 1991) (holding that candidates can file complaints with the Commission to challenge classes viewed as discriminatory).

¹⁸ See 47 U.S.C. § 312(b) (allowing FCC to revoke a station’s license if it fails to permit the purchase of reasonable amounts of airtime by a “legally qualified candidate” for a federal elective office); 47 C.F.R. § 73.1940 (defining “legally qualified candidate”).

¹⁹ There are things called upfronts, which usually take place in May, where television networks unveil their schedule of shows for the upcoming television season, which begins in the fall. Upfronts are used to allow companies to buy commercial airtime “up front,” or several months before the television season begins.

²⁰ One station in a media market serving Georgia refused to provide Canal Partners Media with its rate card for an expected general-election runoff until after the election returns dictated that there would be a runoff. See Mills

(continued...)

cannot establish a position in the LIFO pecking order until they become a legally qualified candidate,²¹ applying LIFO to preempt political candidates' advertisements in favor of commercial advertisers' spots discriminates against political candidates in violation of § 315(b) of the Communications Act.

And when one party requires a runoff election to select its nominee and the other does not, LIFO discriminates against the political candidate that needs a runoff to get his or her party's nomination. In this instance, applying

²⁰(...continued)
Declaration at ¶ 9.

Further, because candidates cannot spend money raised for a general election until they qualify for the general election by winning their party primary [e.g., 11 C.F.R § 102.9(e)(3); O.C.G.A. § 21-5-43(d)], candidates face legal impediments to placing orders early that commercial advertisers do not.

²¹ While federal candidates may not have to pay for their spots until one week before they are scheduled to air, stations may require non-federal candidates to pay earlier. *In re Request for Ruling on Advance Payment of Political Adver. of Beth Daly, Great Am. Media, Inc.*, 7 FCC Rcd. 5989, 5991 (F.C.C. 1992). But all candidates must abide by the applicable campaign-finance laws, which restrict candidates ability to spend money before they become a legally qualified candidate [e.g., O.C.G.A. § 21-5-43(d)] and, depending on the jurisdiction, may also prohibit them from placing orders even if they are not paid for before they become a legally qualified candidate.

Additionally, station cancellation policies discourage candidates from placing orders for airtime early. Candidates make purchasing decisions based on targeting and the flow of the campaign, which are often subject to change and adjustment as the election approaches. It has been said that a week is a lifetime in politics, and station cancellation policies—which sometimes require as much as two weeks' notice in order to cancel—encourage campaigns to place orders as late as possible so the campaigns can allocate their advertising based on the most up-to-date data.

LIFO to preempt political candidates' advertisements in favor of commercial advertisers' spots not only violates § 315(b) of the Communications Act, but it also has to the potential to violate 47 C.F.R. § 73.1941(e).²²

In Georgia in 2014, Republican David Perdue needed a runoff to win his party's nomination for the U.S. Senate. Perdue became the legally qualified candidate for the Republican Party on July 22, 2014—two months after Michelle Nunn won the Democratic primary on May 20, 2014.²³ If using LIFO to preempt political candidates' advertisements in favor of commercial advertisers' spots within the 45- and 60-day pre-election windows were legal (which it is not), Nunn was able to get in the LIFO line on May 21 while Perdue had to wait until July 23. That hardly seems fair.

5. Stations apply LIFO to preempt political candidates' advertisements in favor of commercial advertisers' spots to steer candidates into buying more expensive categories of airtime, a practice the Commission has held to be illegal.

Political advertising is unique. November 8, 2016, is Election Day.

²² In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage ...

47 C.F.R. § 73.1941(e).

²³ Demonstrating that this is not a partisan issue, Canal Partners Media was Michelle Nunn's media buyer.

McDonald's will be in business the following day and for many days thereafter, so it will not care if some of its advertisements are preempted. It will just run the preempted spots another day. For political candidates, there is no November 9 in 2016 because the campaign will be over on November 8. And because political candidates cannot buy airtime for the general election until they become a legally qualified candidate for that election, they cannot buy time early to be first in the LIFO pecking order. Thus, as applied to political candidates, it appears LIFO, if permitted by this Commission, would just be a tool that stations can use to steer political candidates into buying more expensive classes of airtime, a practice this Commission has held to be illegal.²⁴

6. It is illegal for broadcast stations to preempt political candidates' advertisements in favor of commercial advertisers' spots within a particular class of time by using the Last-In-First-Out or LIFO method to determine preemption priorities.

Within the 45- and 60-day pre-election windows, a station that uses LIFO to preempt political candidates' advertisements in favor of commercial advertisers' spots within a particular class of time violates Section 315(b) of

²⁴ See *Codification of the Commission's Political Programming Policies*, 7 FCC Rcd. 678, 688 (F.C.C. 1991) (holding that the requirement to make all discount rates and privileges offered to commercial advertisers available to candidates "serves to ensure that candidates are able to avail themselves of their statutory rights and are not steered to purchase more expensive categories of time").

the Communications Act, which requires that broadcast stations treat candidates as their most-favored commercial advertisers as far as terms, conditions, and charges for airtime are concerned.

The NAB argues that if stations were to consider political candidates' advertisements as the First-In spots no matter when they were bought, they would be giving candidates greater benefits than those actually conferred upon the most-favored commercial advertiser.²⁵ But this Commission has expressly rejected that argument:

Cox contends that the Commission's interpretations of benefits that must accrue to candidates are now based on a composite picture of the most-favored commercial advertiser, and that no single advertiser would ever receive all the advantages that candidates must receive through the Commission's "cherry-picking" of benefits given to all commercial advertisers....

We believe that we should continue to apply the most-favored advertiser standard not only to the advertising rates themselves but also to station sales practices and other discount privileges that improve the value of the spot to the advertiser. These would include make goods, preemption priorities, and any other factors that enhance the value of a spot. These characteristics effectively determine the particular class of time at issue. Hence, they must be disclosed and made available to candidates at the LUC. Even if it were true that no single advertiser would ever receive all such benefits (a conclusion some commenters dispute), nonetheless we believe that, because all such factors enhance the value of a particular class of time and improve the value of individual spots (even though the price itself does not necessarily reflect such value),

²⁵ NAB Comments at *passim*.

each such benefit must be made available to candidates. Any other approach would be inconsistent with the statute's express directive that candidates be charged no more than the station's most-favored advertiser for the "same class" of time.²⁶

The most-favored-advertiser standard applies not just to advertising rates, but to preemption priorities that improve the value of the spot to the advertiser as well.²⁷ If a station uses LIFO to set preemption priorities within classes of time, the "First-In" advertiser within a particular class of time enjoys a preemption priority that makes it the station's most-favored commercial advertiser. Thus, under § 315(b), a political candidate is entitled to the same priority against preemption that the station gives the First-In advertiser no matter when the political candidate books his or her spot.²⁸

7. LIFO can be used to determine preemption priorities *between candidates* within a class of time.

The NAB pointed out that Canal Partners Media's petition did not

²⁶ *Codification of the Commission's Political Programming Policies*, 7 FCC Rcd. 678, 689–90 (F.C.C. 1991) (parentheticals in original; emphasis added; footnotes omitted).

²⁷ *Id.*

²⁸ *See Codification of the Commission's Political Programming Policies*, 7 FCC Rcd. 678, 690 (1991) (rejecting broadcaster's argument the benefits that must accrue to candidates should not be based on a composite picture of the most-favored commercial advertiser and holding that the most-favored advertiser standard applies to the privileges that improve the value of the spot to the advertiser, including make goods, *preemption priorities*, and any other factors that enhance the value of a spot).

explain what might happen if several candidates purchased time in a class and not all candidate advertisements would clear after all commercial advertisers' spots are preempted.²⁹ We'll address that:

The requirements of reasonable access and equal opportunities govern preemption decisions between political candidates' spots. If reasonable access and equal opportunities are properly accounted for and that does not settle the issue of which spots should clear and be preempted, a station could apply LIFO to the political candidates spots to determine which spots to clear and preempt.

After reasonable access and equal opportunities are properly accounted for, WVUE-TV in New Orleans uses LIFO as the tie breaker between and among candidates to decide which candidate spots should clear and be preempted. Candidate spots are the last to be preempted; WVUE does not use LIFO to preempt political candidates' advertisements in favor of commercial advertisers' spots.

There is nothing wrong with the application of LIFO between commercial advertisers or between political candidates (so long as the requirements of reasonable access and equal opportunities are respected). It is the application of LIFO to preempt political candidates' advertisements in favor of

²⁹ NAB Comments at 14.

commercial advertisers' spots within a particular class of time within the 45- and 60-day pre-election windows that runs afoul of § 315(b) of the Communications Act and its most-favored-advertiser requirement.

Conclusion

LIFO sounds fair, and it is in many respects. But § 315(b) of the Communications Act requires broadcasters to assume obligations when it comes to political speech. One of those obligations is that a broadcast station must treat candidates as its most-favored commercial advertisers as far as the terms and conditions and charges for airtime are concerned.³⁰ The purpose of this requirement is to give candidates “greater access to the media so that they may better explain their stand on the issues, and thereby more fully and completely inform the voters.”³¹

Using LIFO to preempt political candidates' advertisements in favor of commercial advertisers' spots within a particular class of time within the 45- and 60-day pre-election windows establishes a race. To the swiftest go the spots. The NAB asserts that nothing could be more fair. Except—due to

³⁰ *Codification of the Commission's Political Programming Policies*, 7 FCC Rcd. 678, 689–90 (1991) (holding that the most-favored advertiser standard applies to a station's sales practices and other discount privileges that improve the value of the spot to the advertiser).

³¹ 1972 U.S.C.C.A.N. 1773, 1774.

campaign-finance laws that restrict candidates' ability to spend money and the Communications Act itself, which only gives candidates the right to buy airtime after they become "legally qualified candidates"—it is a race in which political candidates do not start at the same time as commercial advertisers. That, coupled with the requirement that stations are required to treat political candidates equivalent to their most-favored advertiser during the 45- and 60-day pre-election windows, makes the application of LIFO during those periods to preempt political candidates' advertisements in favor of commercial advertisers' spots within a particular class of time illegal.

During the pre-election windows, stations can use LIFO to establish preemption priorities within a particular class of time between commercial advertisers, and it can use LIFO to establish preemption priorities between political candidates within a particular class of time if the requirements of reasonable access and equal opportunities are respected. They just cannot use LIFO to preempt political candidates' advertisements in favor of commercial advertisers' spots within a particular class of time.

The Commission should issue a declaratory ruling stating that if broadcast stations are using LIFO as a method for determining preemption priorities with a particular class of time within the 45- and 60-day pre-election windows, they must treat political candidates as being the First-In advertiser

regardless of when the candidate purchased its airtime to be in compliance with § 315(b) of the Communications Act.

Respectfully submitted this 17th day of March 2015.

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Exhibit A

POLITICAL BROADCAST CATECHISM

18TH EDITION



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Additional copies of the Political Broadcast Catechism are available at nabstore.com

which some of the other spots running were sold at a higher rate than the spot for which the make good is being given, the make good will reduce the LUC for that period to the rate originally paid for it. Any political advertiser who paid a higher rate for time in the period in which that make good is aired must be given a rebate. *Political Programming Policies*, 7 FCC Rcd 678, 697 (1991).

A station must provide make goods to candidates before the election if it has provided time-sensitive make goods to any commercial advertiser purchasing the same class of time during the year preceding the applicable election period. *Political Programming Policies*, 7 FCC Rcd 678, 696-97 (1991); *Political Programming Recon.*, 7 FCC Rcd 4611, 4618 (1992).

If a make good is being furnished to meet contracted-for promises of audience size, demographics or ratings, that make good will not affect the LUC. *Political Programming Policies*, 7 FCC Rcd 678, 697 (1991). The benefits for such audience guarantee policies must be made available to candidate advertisers. The FCC requires that if a station will not know until after the election whether audience guaranty make goods might be due a candidate, this fact should be disclosed to the candidate, and an alternative, such as post-election cash rebate or a credit toward a future election should be negotiated. *Political Programming Recon.*, 7 FCC Rcd 4611, 4618 (1992); *see also Zell Miller and Guy Millner Against Station WALB-TV*, 12 FCC Rcd 10550 (1997).

The FCC staff has stated informally that a make good given due to technical problems when the spot was originally scheduled will not affect the LUC in the time period in which the make good runs.

Spot Separation Policies or "Pod Exclusivity"

The Commission has held that stations are not required to guarantee spot separation or "pod exclusivity" to candidates. Such guarantees are different from make good or preemption policies because they do not significantly affect the value of particular classes of time. *Lawton Chiles, Bob Martinez, Bill Nelson, and Jim Smith Against Station WCIZ-TV 1 Miami, Florida*, 12 FCC Rcd 12248 (1997).

Preemption Policies

In general, stations must apply their normal preemption policies to political advertisers. FCC staff has raised concerns about stations which allow commercial advertisers to preempt other ads by offering a small amount over the price paid by the first advertiser, but require candidates to move to a higher "class" to preempt an existing spot. On the other hand, FCC staff has also expressed concerns about station preemption policies such as "last in, first out" that may have the effect of preferring long-term commercial advertisers over candidates. Stations facing preemption questions should seek advice of counsel.

Exhibit B

Declaration of Amy Mills

Amy Mills declares as follows:

1. My name is Amy Mills. I am over 18 years of age, competent to testify to the matters contained in this declaration, and make this declaration based upon my personal knowledge.
2. I am employed as Senior Media Strategist by Canal Partners Media, LLC (CPM), a firm that specializes in political-media buying. CPM is the successor in interest to LUC Media Group, Inc. I have been employed by CPM or its predecessor since 1998. Before working for CPM and LUC, I worked in sales with several broadcast stations in Atlanta.
3. I have placed time in markets throughout the country since 1998.
4. At the beginning of every campaign, CPM requests that stations provide us with their rates and written disclosures of their sales practices. We review the disclosures very carefully, and pay particular attention to classes of time and preemption practices.
5. I understand that the National Association of Broadcasters (the NAB) has told the Commission that a large number of stations use LIFO to determine preemption priorities and apply it to preempt political candidates' advertisements in favor of commercial advertisers' spots.
6. For the 2014 election cycle, CPM purchased airtime in 34 states: Alabama, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Iowa, Indiana, Illinois, Kansas, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Wisconsin, and West Virginia. CPM also purchased national airtime during the 2014 election cycle.
7. In order to prepare this affidavit, we reviewed 169 of the written disclosures that were provided to CPM for the 2014 election cycle. This represents a large number of the stations that provided us with their written disclosures. The 169 written disclosures covered 55 media markets. Of the 169 written disclosures, only 7 mentioned that the

station would be using the Last-In-First-Out or LIFO method to determine preemption priorities within a particular class of time.

8. Using Georgia as an example, CPM purchased time for multiple candidates on 33 stations covering seven markets in 2014 (including the Chattanooga and Tallahassee media markets, which broadcast into Georgia). Only one of the stations mentioned in their written disclosures that they would use LIFO to determine preemption priorities within particular classes of time and apply LIFO to preempt political candidates's advertisements in favor of commercial advertisers' spots.
9. Anticipating that there might be one or two state-wide runoff elections after the general election, as Election Day approached, we requested several stations to provide us with their rate cards for the anticipated runoff election. It is my recollection that one station refused to provide us with its rate card for advertising for the runoff election, saying that they would only provide us with their rate card if the election returns dictated that there would be a runoff. This relates to LIFO because a candidate cannot place an order to buy airtime and get in the LIFO line without a rate card telling the candidate how much the airtime will cost.
10. CPM purchased time for one federal candidate in Louisiana on 31 stations in seven markets in 2014. Only one of the 31 stations mentioned in their written disclosures that they would use LIFO to determine preemption priorities within particular classes of time and apply LIFO to preempt political candidates's advertisements in favor of commercial advertisers' spots.
11. Through persistent questioning, we have learned that many stations use LIFO to preempt political candidates' advertisements in favor of commercial advertisers' spots.
12. One station, WAFB-TV in Baton Rouge, Louisiana, did not mention anything regarding the use of LIFO in its written disclosures. In response to persistent questioning about its practices, we were told that WAFB uses LIFO with exception and subject to "equitable considerations" to preempt political candidates' advertisements in favor of commercial advertisers' spots within classes of time. It is my understanding that the station used subjective criteria in making preemption decisions. For example, I understood that WAFB would try to

avoid preempting certain advertisers “too much,” regardless of the rate other advertisers paid or the date other advertisers placed their orders.


13. For all of the stations that either voluntarily disclosed their use of LIFO or that we were able to ferret out their use of LIFO, the only thing that was consistent was that there was nothing consistent about their use of LIFO. Stations’ practices were more opaque than transparent. We have learned that many stations are using LIFO to preempt political candidates’ advertisements in favor of commercial advertisers’ spots.
14. If a large number of stations are using LIFO to determine preemption priorities and apply it to preempt political candidates’ spots in favor of commercial advertisers as the NAB represents—which I believe is true based on my experience—then the majority of stations doing so are not disclosing their practices.
15. The following stations are examples of stations that we ascertained used LIFO during the 2014 election cycle to preempt political candidates’ advertisements in favor of commercial advertisers’ spots within a class of time without mentioning that they would do so in their written disclosures: WTVM-TV, WALB-TV, WFXG-TV, KARD-TV, KTVE-TV and KTAL-TV.
16. While I believe it is a violation of the law for stations to use LIFO to preempt political candidates’ advertisements in favor of commercial advertisers’ spots within a particular class of time during the 45- and 60-day pre-election windows, I believe a proper station disclosure of its use of LIFO would look like this:

During the lowest-unit-charge period, the preemption protection provided to any advertiser within a class will be based on the date on which their ads were placed, with later-placed ads preempted first. This policy has been in effect for at least one year before the date of this disclosure. The station represents that it has applied this policy without any exceptions (including exceptions when providing make goods) during the one-year period before the date of this disclosure. If it is determined that an exception was made, whether intentionally or by mistake, this policy will no longer be applied, and candidates will be treated as though their spots were placed first and will be the last preempted within the

class. If the station deviates from this policy after the date of this disclosure, whether intentionally or by mistake, this policy will no longer apply and candidates will be treated as though their spots were placed first and will be the last preempted within the class.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on March 17, 2015.


Amy Mills